IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3556 OF 2004

Shri Shamshuddin T. Inamdar and others ... Petitioners

v/s

Shri Sayyad Ahmed Kutubealam Bukhari Inamdar and others ... Respondents

Mr Vijay Killedar for Petitioners.

Mr G.M. Savagare for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 20TH JULY 2005.

P.C. :-

1. The order impugned in the petition is a just order. The Executing Court has observed that the property of which the decree holder is directed to execute the sale deed is already in possession of the judgment debtor i.e. present petitioner. However, possession of the land of which the judgment debtor is to execute sale deed in favour of the decree holder is not in possession of the decree holder but in possession of the judgment debtor. Thus, the judgment debtor is enjoying the land of which he seeks to get possession though he is already in possession. He also continues to be in possession of the land which he has to handover the decree holder. Therefore, the Executing Court has said that though the sale deed of that land can be executed after obtaining permission of the authorities under the Bombay Prevention of Fragmentation and Consolidation of holdings Act, in the meantime the judgment debtor can be asked to handover possession to the decree holder. As I find that the order does justice between the parties, in my opinion, it will not be appropriate for this Court to interfere with the order which results into injustice between the parties.

Petition is rejected.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.